As regards the contention of counsel for the respondent, there is evidence that the partnership has substantial book-debts to be collected; that the respondent has not taken any steps to collect such debts and that some of them will soon be statute-barred if not already statute-barred. There is no doubt that there is no co-operation at all between the parties and it is therefore desirable that an independent third party such as a receiver take over the affairs of the partnership, collect book debts, prepare final accounts and thus complete the dissolution of the partnership.

For the above reasons, we allow the appeal and restore the Order made by the Acting Registrar on November 26, 1976.

Appeal allowed.

Solicitors: *Yap & Yap; L.A.J. Smith.*

NG CHWEE POH v. PUBLIC PROSECUTOR

[A.Cr.J. (Chua J.) September 30, 1977]

[Singapore — Magistrate's Appeal No. 247 of 1975]

Revenue Law — Tax Evasion — Understating value of assets — Assets and liabilities of taxpayer, his wife and dependent children — Fixed deposit — Interests from — "Wilfully with intent to evade tax" — Whether evaded income of partnership can be halved between partners — Income Tax Act (Cap. 141), ss. 36, 65A & 96(1)(a) & (c).

In this case appellant was tried on nine charges as follows:—

On the first charge under section 96(1)(c)

That he, on or about the October 24, 1972 in Singapore, having been required by the Comptroller of Income Tax by notice dated March 1, 1972, pursuant to section 65A of the Income Tax Act, Chapter 141, to furnish him with particulars to wit a statement of assets and liabilities of himself, his wife and dependent children as at December 31 of each year from 1960 to 1971, did wilfully with intent to evade tax, give false answer by understating the net value of his assets by $248,939.46, and he had thereby committed an offence under section 96(1)(c) of the Income Tax Act, Chapter 141, and punishable under section 96(1) of the said Act.

On the second to ninth charges under section 96(1)(a)

That he, on several dates in Singapore, did wilfully with intent to evade tax, omit from his returns of income for the Years of Assessment 1965, 1966, 1967, 1968, 1969, 1970, 1971 and 1972, the following amounts of taxable income being bank interest received from Fixed Deposit Accounts:—

Charge No.	*Date of Offence*	*Taxable Income*	*Year of Assessment*
2nd	25.9.65	$ 1,660	1965
3rd	12.7.66	2,774	1966
4th	8.6.67	2,500	1967
5th	5.7.68	3,500	1968
6th	12.9.69	4,162	1969
7th	27.6.70	5,991	1970
8th	14.5.71	18,621	1971
9th	31.5.72	2,410	1972

and he had thereby committed offences under section 96(1)(a) of the Income Tax Act, Chapter 141, and punishable under section 96(1) of the said Act.

The appellant was the precedent partner of Poh Hua Granite Quarry Co., the other partner being his father, Ng Tham. On November 12, 1971, the Department first sent a Notice under section 65A of the Act to the appellant requiring him to furnish particulars of assets and liabilities of himself, his wife and dependent children as at December 31, 1969. He did not comply with this request.

On March 1, 1972, a Notice under section 65A was served personally on him requiring him to submit a statement of assets and liabilities of himself, his wife and dependent children as at December 31 of each year from 1960 to 1971. On October 24, 1972, the appellant through his Accountant submitted a net worth statement. Relying substantially on this net worth statement the Department compiled a net worth computation statement showing total discrepancy of $255,638. From this amount, additional tax of $89,545.95 would arise. On November 29, 1973, the matter was settled for a sum of $150,000 representing additional tax of $89,545.95 and penalty of $60,454.05 in lieu of prosecution. As part of the settlement, the appellant signed a Certificate of Disclosure declaring that he had disclosed all his assets to the Department.

One month after this settlement, the Bank wrote to the Department that it had inadvertently omitted several Fixed Deposits in the name of the appellant. Further investigation revealed that he had omitted seven Fixed Deposits in his own name and in that of his wife totalling $248,939.46. The Department then compiled a second Net Worth Computation Statement by incorporating these seven Fixed Deposits which produced a further discrepancy of $311,926 which if disclosed at the time of settlement would have given rise to further additional tax of $155,967.70. It was also found that interest earned from these Fixed Deposits, totalling $41,618 had not been declared in the appellant's annual tax returns for the Years of Assessment from 1965 to 1972.

The above-mentioned nine charges were preferred against the appellant and he was tried in the 8th District Court from October 21, 1975 to November 29, 1975 when he was convicted on all the charges and sentenced as follows:—

(a) on the first charge — to 9 months' imprisonment and to pay a penalty of $467,909.10;

(b) on each of the other 8 charges — to 6 months' imprisonment and to pay a total penalty of $51,002.40,

— all the terms of imprisonment to run concurrently.

On appeal, the appellant's 3 main contentions were:— (1) that the Comptroller of Income Tax Notice under section 65A requested for "a statement of assets and liabilities of himself, his wife and dependent children" but nowhere in the section is dependent children mentioned. It is argued that the purported request contained in the Notice is considerably in excess of the powers given by section 65A and is therefore not "asked or made in accordance with the provision of this Act" as required by section 96(1)(c) of the Act under which the charge is brought and the charge consequently discloses no offence. Thus the Notice under section 65A of the Act, relied upon by the respondent and referred to in the first charge is *ultra vires* and void and therefore the charge is void; (2) that the prosecution had not proved beyond reasonable doubt that the appellant had acted "wilfully with intent to evade tax" and the trial judge should have acquitted the appellant; (3) that the profits of Poh Hua Granite Quarry Co. are, in law, payable equally to both partners, and the appellant is, in law, required to account to his co-partner his share of the firm's monies which the appellant has in his account or which he may have utilized. The legal position is that half the net money of the firm which is in the appellant's possession belongs to his co-partner and the co-partner is to that extent a creditor and the apparent assets of the appellant must be, to that extent, reduced to give a true picture of his worth. The factual result of the application of the law is that the understatement was only $16,394.08 and not $248,939.46 as set out in the first charge.

Held: (1) there is no substance in the argument as para (e) of section 65A of the Income Tax Act is wide enough to enable the Comptroller to ask for information as to the assets of the taxpayer's dependent children;

(2) from the evidence the appellant was very much aware of the existence of the Fixed Deposits at the time he submitted the net worth statement on October 24, 1972. The evidence showed that he had been keeping constant track of the Fixed Deposits. On the receipt of the first Notice under section 65A he embarked upon a sudden programme of withdrawals of all the Fixed Deposits and then employed a complicated scheme whereby he concealed his identity and had effective and actual control substantially over the withdrawn Fixed Deposits. In every year from 1965 to 1971 the appellant had been keeping two sets of accounts. At the close

of the case for the prosecution there was evidence that the appellant acted wilfully with intent to evade tax;

(3) the Income Tax Act does not recognize a partnership as a distinct taxable person. Therefore a partnership is not a separate entity and has no direct liability for the payment of tax. The partnership is liable only to lodge a return of income through its partners;

(4) the question of apportionment of the profits of a partnership arises under section 36 of the Act but it clearly refers only to declared taxable income submitted in the return in order to allow the Comptroller to determine the individual partner's share of profits and consequently their individual liability to tax. If profits from the partnership are not declared in a partnership return, the question of apportionment of the evaded profits does not arise;

(5) the Act does not provide for any apportionment of evaded taxable income among its partners where a prosecution has already been instituted against one partner in respect of that evaded taxable income.

MAGISTRATE'S CRIMINAL APPEAL.

John Newey Q.C. and *Mohideen H. Rubin* for the appellant.

James Chia Shih Ching (Deputy Public Prosecutor) and *Ronald Lee* for the Public Prosecutor.

Chua J.: The appellant was convicted by a District Court on nine charges under section 96(1)(a) and section 96(1)(c) of the Income Tax Act, Cap. 141 (hereinafter referred to as "the Act"). He was sentenced to nine months' imprisonment and to pay a penalty of $467,909.10 on the first charge, and on each of the other eight charges to six months' imprisonment and to pay a total penalty of $51,002.40, all the terms of imprisonment to be concurrent.

The first charge alleged that he, on or about October 24, 1972, in Singapore, having been required by the Comptroller of Income Tax by notice dated March 1, 1972, pursuant to section 65A of the Act, to furnish him with particulars, to wit, a statement of assets and liabilities of himself, his wife and dependent children, as at December 31 of each year from 1960 to 1971, did, wilfully with intent to evade tax, give false answers by understating the net value of his assets by $248 939.46, thereby committing an offence under section 96(1)(c) of the Act, which is punishable under section 96(1) of the Act.

The rest of the eight charges alleged that he, on separate dates between September 25, 1965, and May 31, 1972, in Singapore, did, wilfully with intent to evade tax, omit from his returns of income for the respective years of assessment from 1965 to 1972 separate amounts totalling $41,618 being the sum total of bank interest received by himself and his wife, Madam Ong Ah Neo, from fixed deposits held in either of their names with the Malayan Banking Berhad, thereby committing offences under section 96(1)(a) of the Act, which is punishable under section 96(1) of the Act.

The appellant is a businessman and his principal business during the period under investigation between 1962 and 1971 was in Poh Hua Granite Quarry Co., (the firm), which was a family partnership concern and the appellant and his father, Ng Tham, were the only two partners. The business was commenced in 1962 and was managed and directed by the appellant and his father assisted him. The firm had no banking account in its own name until July 29, 1964. All business cheques received were banked into the appellant's personal account with the Jurong sub-branch of the Malayan Banking Berhad (Account No. 6280) with his father's approval. On July 29, 1964, the firm opened a bank account in its own name with the same bank (Account No. 6770). The appellant was the only person authorised to operate this account on behalf of the firm. Even after this date some payments by its customers still went into the appellant's own personal account with the knowledge of his father. The appellant utilised the firm's money that had been channelled into his own personal account, No. 6280, since 1962 in acquiring several properties and opening fixed deposit accounts in his and his wife's name with the same bank.

Besides having fully control and direction over the financial matters of the firm, the appellant also assumed the responsibilities of preparing and maintaining and authorised the preparation and maintenance of all the books of accounts and records of the firm and the submissions of all income tax annual returns of the firm to the Inland Revenue Department. The firm's tax returns were submitted annually together with attached statements of accounts which formed part of the returns. They were all signed by the appellant with the exception of one or two years when they were signed by his accountant on his behalf.

In late 1971 after the Inland Revenue Department (the Department) had received "secret and confidential information from anonymous sources", Chan Huai Ser (PW1), a Senior Assessment Officer of the Department, was instructed to commence full-scale investigation into the tax affairs of the appellant. As he was, at that stage, not provided with any specific information by these informers relating to any tax evasion by the appellant he employed the "net worth method" with which to commence his investigation.

The purpose in using this net worth method is to discover whether a taxpayer has had any increases in his wealth, which had not been declared previously by him in his Income Tax Returns, for each of the years during the period under investigation, and if so, whether such increases should be assessed for the payment of additional taxes by the taxpayer. This method is usually embarked upon where the Department has not been afforded any information from which it can compute the taxes that would have to be assessed as against the taxpayer on his increased wealth, if any.

As a first step, the Department will resort to the use of section 65A of the Act, which provides for the service of a notice on the taxpayer requiring him to submit to the Department a statement of all his assets and liabilities as at December 31 of each year for the period under investigation. The Department, therefore, has to rely very heavily on the voluntary co-operation of the taxpayer to make a full disclosure of all his assets over the period in question. This information, when submitted to the Department, will be contained in a "Net worth Statement" prepared by the taxpayer himself, or his accountant on his behalf. Once the Department receives the net worth statement it then prepares a "Net Worth Computation Statement" which is based on the information supplied in the net worth statement. From this net worth computation statement it will be shown whether the tax-

payer has had, *prima facie*, any increases in his wealth. If there is a wealth increase it is deemed to be undeclared taxable income and the onus is then on the taxpayer to explain it away e.g. that it is derived from a non-taxable source such as a legacy or a lottery winning. If the taxpayer is unable to account for this increase in his wealth to the satisfaction of the Department this increase will be treated as evaded taxable income and the Department will not only raise additional assessments to recover the tax loss but will also impose a penalty on the taxpayer. This will normally be the case in the event of a tax settlement where the tax payer will pay additional tax plus a penalty in lieu of a prosecution under the Act for the evasion.

The reliability and accuracy of the net worth method to detect undeclared taxable income rests largely on the full co-operation of the taxpayer in voluntarily and honestly making a complete and accurate disclosure of all his assets and liabilities and that of his wife and dependent children for the period under investigation.

In the present case the Department had first sent a notice under section 65A of the Act to the appellant on November 12, 1970, (Exhibit D6) requiring him to furnish particulars of assets and liabilities of himself, his wife and dependent children as at December 31, 1969 In short, the appellant was requested to submit a net worth statement showing his wealth position at the end of 1969. The appellant did not comply with this request of the Department.

When Chan Huai Ser was instructed to investigate the appellant's tax affairs a similar notice under section 65A dated March 1, 1972, (Exhibit P11) was served personally on the appellant by Chan Huai Ser. This notice Exhibit P11 required the appellant to submit within thirty-five days, a statement of the assets and liabilities of himself, his wife and dependent children as at the 31st of December of each year for the years 1960 to 1971, that is, for a period of 10 years.

On October 24, 1972, after several extensions of the time stipulated for submitting the net worth statement, the appellant's then accountant Chua Swee Meng (PW10) submitted on behalf of the appellant a net worth statement (Exhibit P15).

Chua Swee Meng said in evidence that in his preparation of the net worth statement Exhibit P15 he had first explained in detail to the appellant what the Department required, as was contained in the notice Exhibit P11, why he had to submit his net worth statement to the Department and also of the possibility of some unaccountable increase in his assets occasioning the despatch of the notice Exhibit P11 to him. He accordingly examined the documents furnished to him by the appellant which included bank statements relating to his personal accounts, the balance sheet of the firm of Poh Hua Granite Quarry Co. and Poh Aik & Co., his personal income tax file, fixed deposits, bank statements supplied by his "Bank official" and other information and explanations supplied by the appellant. Among those documents were Exhibit D4A and D4B which were statements prepared by the appellant's "Bank official", Tan Mah Chuan (PW2), (the sub-manager of the Jurong sub-branch of the Malayan Banking Berhad). These two documents had been tendered by the appellant to Chua Swee Meng following the latter's request to him to get from his bankers a list of all his fixed deposits and they purported to contain information relating to two fixed deposits of $50,000 and $15,000 in the name of the appellant, since withdrawn from the bank. Chua Swee Meng had contacted Tan Mah Chuan, the sub-manager of the Bank, to verify the contents of Exhibits D4A and D4B and had been assured that those were all the fixed deposits held in the appellant's name. The sub-manager Tan Mah Chuan had held this belief too and had accordingly transmitted this same information to Chuan Huai Ser, the Senior Assessment officer, in a letter dated February 21, 1972, (Exhibit P22). Hence from all the above documents etc., Chua Swee Meng, the accountant, had prepared the net worth statement Exhibit P15 and sent it to Chan Huai Ser the Senior Assessment officer on October 24, 1972.

Chan Huai Ser examined the net worth statement Exhibit P15. After disallowing certain items, he prepared a net worth computation statement (Exhibit P16) on the basis of the information contained in the appellant's net worth statement Exhibit P15. According to the net worth computation statement unaccountable increases in the appellant's wealth amounting to $255,638 over the period under investigation were discovered. From this amount additional taxes amounting to $89,545.95 would arise.

The appellant was asked to account and explain these discrepancies in wealth increase. This was followed by a period of negotiations between the Department, the appellant, his accountant Chua Swee Meng and later his new accountant Yeo Kian Siew (PW11), which resulted in a settlement whereby the appellant agreed to pay the sum of $89,545.95 as additional tax on the discrepancies in wealth increase which was deemed to be undeclared evaded taxable income and a further sum of $60,454.05 as penalty for evasion, in lieu of prosecution under the Act, making a total of $150,000. This was formalised in a written offer by Yeo Kian Siew on behalf of the appellant to that effect on November 17, 1973, (Exhibit P18) which the Department accepted on November 29, 1973, when the appellant and his accountant Yeo Kian Siew called at Chan Huai Ser's office (Exhibit P19).

At the negotiations the appellant was requested by Chan Huai Ser to complete and sign two copies of a document called the Certificate of Disclosure and to return a copy to him. The execution of the Certificate of Disclosure by the appellant is the formal condition to be fulfilled by him upon the settlement of his tax affairs with the Department. Chan Huai Ser cautioned the appellant "to think carefully and make sure that he had disclosed all his assets before signing the said forms". Chan Huai Ser also requested Yeo Kian Siew. the appellant's accountant, to interpret the contents of the Certificate of Disclosure to the appellant before the latter signed it. He was, however, assured by Yeo Kian Siew that this had already been done and the appellant had "understood the whole matter perfectly."

The Certificate of Disclosure was signed by the appellant on November 29, 1973, and witnessed by Yeo Kian Siew (Exhibit P20). This Certificate of Disclosure is a formal declaration by the appellant that

he had made a full and complete disclosure of all his assets and liabilities and that of his wife and dependent children for the years January 1, 1963, to December 31, 1971.

This matter would have ended then and there with the appellant paying the $150,000 by monthly instalments agreed to by the Department. It was, however, not to be.

Earlier on November 13, 1971, Chan Huai Ser had written to the Head Office of the Malayan Banking Berhad requesting the bank to furnish him the bank accounts of the appellant and the firm of Poh Hua Granite Quarry Co. (Exhibit P21). The Jurong sub-branch of the bank replied on February 21, 1972, (Exhibit P22) submitting several bank statements for the period July 28, 1964, to December 7, 1971, in respect of the current account No. 6770 in the name of Poh Hua Granite Quarry Co., which was still in operation. The letter also stated that the appellant's current account No. 6280 was closed on April 27, 1970, and that there were two fixed deposit accounts held in the appellant's name for $53,000 and for $15.000 but they had been withdrawn on December 23, 1970, and December 24, 1970, respectively. This information had been similarly contained in the exhibits D4A and D4B which the appellant had tendered to his accountant Chua Swee Meng when the latter was preparing the net worth statement on behalf of the appellant.

However, about one year and ten months later, on December 24, 1973, the bank wrote again to the Department (Exhibit P23). It states:

"We refer to your letter dated November 13, 1971 and our reply dated February 21, 1972.

Lack of full understanding of instructions led to inadvertent omission by the staff concerned of some long withdrawn fixed deposits in the name of Mr. Ng Chwee Poh abovementioned.

The omission was found during a recent checking of the voluminous records of fixed deposit accounts.

For your perusal, therefore, we furnish you a full list of fixed deposits (Ex. P. 24) made out in the name of Mr. Ng from the very beginning to February 21, 1972. No fixed deposit account has ever been maintained by M/s. Poh Hua Granite Quarry Co.

This is the first time such omission occurred. We regret for the inconvenience caused and assure you of our service always."

Exhibit P24 disclosed seven fixed deposit accounts in the name of the appellant.

Before the bank wrote the letter Exhibit P23 the sub-manager Tan Mah Chuan called the appellant sometime in December 1973. Tan Mah Chuan said in evidence that he told the appellant of this "serious blunder" regarding his other fixed deposits that had not been earlier disclosed to the Department, to which the appellant reacted with "shock and a little anger" and also a complaint that he had "relied on the accuracy of the information from the bank", and that the appellant raised no objection to this information being reported to the Department.

From an examination of the contents of Exhibit P24 Chan Huai Ser found that four of the fixed deposits therein, amounting to about $159,000, had not been disclosed by the appellant in his net worth statement Exhibit P15 submitted to him during his investigation that had culminated in the compilation of his net worth computation statement Exhibit P16. Accordingly on January 28, 1974, he called up the appellant and his accountant Yeo Kian Siew and requested from them an explanation for the non-disclosure of the said four fixed deposits despite their having signed the Certificate of Disclosure Exhibit P20 on November 29, 1973. In reply Yeo Kian Siew, on behalf of the appellant, stated that this was due to "loss of memory" and that "they had relied on their bankers for the information supplied."

On January 29, 1974, Chan Huai Ser wrote officially to Yeo Kian Siew (Exhibit P25) enclosing three statements, one showing all the fixed deposits of the appellant (marked A) and the other two showing the four fixed deposits that had not been disclosed to the department during its investigation (marked B and C). He also requested an explanation for the non-disclosure of these four fixed deposits and how the cash withdrawn had been utilised.

On March 11, 1974, Yeo Kian Siew replied by letter (Exhibit 26) stating that he was instructed by the appellant to offer an explanation which was to the effect that the appellant was "illiterate" and had unwisely relied on his bankers to supply the information in question; that his bankers had not performed this service properly was evident from their correspondence with the department on the matter and this sufficiently explained the appellant's present predicament. The letter also explained how the cash withdrawn from the fixed deposits in question had been utilised. It was stated that (a) $51,437.57 was transferred to the account of Poh Hua Granite Co. to secure its overdraft facilities; (b) $15,206.25 was returned to Ng Chwee Beon the appellant's brother on the instructions of the appellant's father; (c) $56,180 was taken by Oei Thio of 52, Jalan Kechubong, Singapore 28, in repayment of a long outstanding loan; (d) $63,600 and $41,800 which were withdrawn in cash, were for two purposes, (i) to meet the disbursements of Poh Hua Granite Quarry Co. and (ii) to pay tontine bids.

Chan Huai Ser, not being satisfied with the explanation tendered by Yeo Kian Siew and to seek further clarification on the matter regarding the non-disclosure of the fixed deposits, wrote to the bank again on March 22, 1974, (Exhibit P27). He asked, *inter alia*, if the appellant was regularly notified of the dates and amounts of interest accrued due to his fixed deposits. He received a reply from the bank dated April 9, 1974, (Exhibit P28) which stated, *inter alia*, that the appellant had called at the bank on, before, or shortly after the due dates of his fixed deposits held therein and hence there was no necessity for the bank to notify the appellant regularly of those dates.

Before Chan Huai Ser received the reply Exhibit P28 from the bank, he had earlier on April 6, 1974, written to the same bank (Exhibit P29) requesting for fourteen used cheques drawn by the appellant on his current account No. 6280. These cheques were sent to him on April 19, 1974, and from them Chan Huai

Ser discovered that the endorsements on seven of them indicated that they had been used for payments into fixed deposit accounts with the bank. He then wrote to the bank on April 22, 1974, (Exhibit P32) requesting for further information. The bank in its reply dated May 31, 1974, (Exhibit P33) enclosed three statements, Exhibits P34A, P34B and P34C, containing, *inter alia*, records of ten fixed deposit accounts held with the bank in the appellant's and his wife's name. Exhibits P34A and P34B contained information relating, *inter alia*, to seven fixed deposit accounts held in the appellant's name while Exhibit P34C contained information relating to three fixed deposit accounts held in the name of the appellant's wife, Madam Ong Ah Neo. Out of these ten fixed deposit accounts, two of them were withdrawn before December 31 and therefore need not be disclosed by the appellant as part of his assets at the end of the year in the net worth statement. Of the remaining eight fixed deposit accounts, only one was disclosed by the appellant as part of his assets at the end of the year in his net worth statement to the department. Of the seven undisclosed fixed deposit accounts four were in the appellant's name totalling $158,939.46 and three in the name of the appellant's wife totalling $90,000. The sum total of the seven undisclosed fixed deposits was $248,939.46 the subject matter of the first charge.

Following this discovery of the appellant's non-disclosure of the aforesaid seven fixed deposits totalling $248,939.46, Chan Huai Ser prepared a second net worth computation statement (Exhibit P35) incorporating therein the seven undisclosed fixed deposits which showed a further discrepancy in the appellant's wealth by the additional increase of wealth of $311,926 which if disclosed at the time of the settlement would have given rise to further additional tax of $155,967.70.

All the fixed deposits in the appellant's and his wife's name were operated within the period 1964-1971 during which the appellant and his wife earned interest that had accrued thereon. The appellant omitted to disclose in all his annual income tax returns submitted to the department for the years of assessment 1965-1972 these sums of interest earned. Chan Huai Ser accordingly prepared a table (Exhibit P36) showing the interest that had been earned from all these fixed deposits totalling $41,618 on which the additional tax to be assessed amounted to $17,000.80. These sums of interest earned and not disclosed are the subject matters of the second to the ninth charges.

Following this, on November 15, 1974, Chan Huai Ser received from the appellant's accountant, Yeo Kian Siew, a letter (Exhibit P38) together with a revised net worth statement (Exhibit P38A) with explanatory notes and an eleven page list (Exhibit P38D) showing details of cheques paid by customers of Poh Hua Granite Quarry Co. and banked into the appellant's personal banking account No. 6280, from 1963-1970. The letter also stated that the various fixed deposit accounts were made possible "on account of Poh Hua Granite Quarry's funds kept with the accused." Chan Huai Ser surmised that a considerable amount of funds from the business of Poh Hua Granite Quarry Co. must have been appropriated by the appellant for his own use. He, therefore, decided to call for and to examine the books of accounts of the business to ascertain whether the firm had properly declared its profits to the department for the past years. Accordingly, on November 19, 1974, he served a notice under section 65B of the Act (Exhibit P39) on the appellant, requiring him to submit to the department within seven days all the books of accounts and documents of the firm of Poh Hua Granite Quarry Co. for the period 1962-1972. A carbon copy of this notice was also sent to Yeo Kian Siew the appellant's accountant. To this notice Chan Huai Ser received no reply.

However, Chan Huai Ser later received some telephone calls from Yeo Kian Siew who informed him that all the books were "ready for collection" at his office. On December 9, 1974, he was informed by Yeo Kian Siew that the books would be sent to him at his office the following day but this did not materialise. On December 12, 1974, Chan Huai Ser himself went to Yeo Kian Siew's office where he recovered only a few books and some documents relating to 1970 and 1971 which he seized. From this office he then went with Yeo Kian Siew to the premises of Poh Hua Granite Quarry Co. in Jurong where he met the appellant. He then conducted a search of the premises and seized therefrom a large number of books of accounts and other documents recording the business of Poh Hua Granite Quarry Co. for the years, 1962, 1963 and 1965-1971. There were none, however, that related to the business transacted for the year 1964.

Chan Huai Ser examined the seized books of accounts and documents and compared the sales made by the firm of Poh Hua Granite Quarry Co. as recorded therein, with those declared in statements of the firm submitted together with its Annual Income Tax Returns by the appellant for the years 1962, 1963 and 1965-1971. From the books of accounts and documents he prepared separate summaries of the sales made for the relevant years. Comparing the total of sales in these summaries with the sales declared in the firm's statements of accounts submitted with its Annual Income Tax Returns he discovered the following: —

(a) The sales for 1962 as recorded in the books seized amounted to $29,061.33, whereas in the statement of accounts of the firm submitted with its Annual Income Tax Returns for 1962 it was declared that there were no sales whatsoever for that year.

(b) The sales for 1963 as recorded in the books seized amounted to $162,044.95, whereas in the statement of accounts of the firms submitted with its Annual Income Tax Returns for 1963 the total declared sales amounted to only $143,585.45, an under-declaration of $18,459.50.

(c) The sales for 1966 as recorded in the books seized amounted to $246,711 whereas in the statement of accounts of the firm submitted with its Annual Income Tax Returns for 1966 the sum declared was $246,710.75.

The sales for the years 1965, 1967-1971 as recorded in the books seized were correctly declared

in the firm's Annual Income Tax Returns for those years.

In connection with the sales for the year 1966 Chan Huai Ser had, however, recovered two bundles of sales vouchers (Exhibit P48) from the firm's premises together with the other books of accounts and documents seized on December 12, 1974. He discovered that the sales in one of these two bundles of vouchers, with the exception of a few missing ones, were recorded in the 1966 Sales Book (Exhibit P46) whereas the sales in the other bundle (Exhibit P48A) amounting to $34,406.73 were not recorded in the 1966 Sales Book Exhibit P46 and this amount of $34,406.73 was not disclosed in the 1966 Ledger (Exhibit P47A) nor in the statement of accounts of the firm submitted with its 1966 Annual Income Tax Returns. It was, however, discovered subsequently that these omitted sales had been recorded in one of two "master ledgers" (Exhibit P86) seized by Chan Huai Ser on July 21, 1975, from Yeo Kian Siew when the latter brought it to his office together with another ledger Exhibit P87.

On December 20, 1974, pursuant to his perusal of the eleven page list Exhibit P38D sent by Yeo Kian Siew to him on November 15, 1974, showing details of cheques paid by customers of Poh Hua Granite Quarry Co. and banked into the appellant's personal banking account No. 6280 from 1963-1970, Chan Huai Ser wrote to Yeo Kian Siew requesting for "all records and information on the basis of which he compiled his schedules showing cheques paid by third parties to Poh Hua Granite Quarry Co. but banked into his clients' personal accounts". Yeo Kian Siew did not reply to this letter. On January 13, 1975, Chan Huai Ser wrote again to him with the same request and again he failed to receive a reply. In his testimony he explained that he was "under a mistaken impression that they (i.e. the two master ledgers Exhibits P86 and P87) had been taken by Chan Huai Ser when he visited the premises of Poh Hua on December 12, 1974." These "master ledgers" Exhibits P86 and P87 contained a different record of accounts of sales made by the firm for the years 1965-1970 from that contained in the books etc. seized by Chan Huai Ser on December 12, 1974.

Following this, on January 22, 1975, Yeo Kian Siew came to see Chan Huai Ser together with the appellant and a friend, one Oei Khie. Yeo Kian Siew produced two small notebooks and four handwritten lists (Exhibits P83A, P83B and P84). Yeo Kian Siew explained that Exhibits P83A and P83B and P84 were the records, in addition to the books seized by Chan Huai Ser on December 12, 1974, from which he had compiled Exhibit P38D (the eleven page list showing details of cheques paid by customers of Poh Hua Granite Quarry Co. and banked into the appellant's personal banking account No. 6280 from 1963-1970). Chan Huai Ser was not satisfied with his explanation. He concluded that it was just not possible for Yeo Kian Siew to compile Exhibit P38D from Exhibits P83A and P83B nor from the books of accounts and documents seized by him on December 12, 1974. The appellant informed him that he had made a thorough search of his house and his business premises but could not find any other records or books there. This assurance by the appellant was confirmed by Yeo Kian Siew in his testimony. It is to be noted that the master ledgers Exhibits P86 and P87 had as yet to be submitted to Chan Huai Ser for his perusal.

On January 27, 1975, Chan Huai Ser wrote to Yeo Kian Siew (Exhibit P85) stating, *inter alia*, the reasons why Yeo's explanation as regards Exhibit P38D could not be accepted and pointedly stated, "Your client must have some other records from which the schedules were compiled and I now request him to produce such records as a mark of good faith". Chan Huai Ser again failed to receive any reply from Yeo Kian Siew who in his testimony gave the explanation that he had "no idea what books and records were seized by Chan Huai Ser on December 12, 1974" and said that from January 22, 1975, to July 19, 1975, he had had no contact with the appellant.

Then on July 19, 1975, the appellant came to give Yeo Kian Siew the "master ledgers" Exhibits P86 and P87 to be handed over to Chan Huai Ser. On the same day both the appellant and Yeo Kian Siew went to see Chan Huai Ser (nearly seven months after Yeo Kian Siew had received Chan Huai Ser's query Exhibit P85 on Exhibit P38D). Chan Huai Ser was then informed that Yeo Kian Siew would be handing over some books of accounts of the firm at a later date for his examination.

Subsequently, on July 21, 1975, Yeo Kian Siew handed over to Chan Huai Ser the two "master ledgers" Exhibits P86 and P87 for inspection. Chan Huai Ser retained these two books.

Chan Huai Ser on examining these two ledgers found that they disclosed accounts relating to the customers of Poh Hua Granite Quarry Co. including the amounts of granite sold to each customer and the payments thereof made by them. From these he then prepared a summary listing out the customers and the total sold to them in each year (Exhibits P88 and P89). He also prepared seven statements (Exhibits P90-P96) showing the sales made to each customer for each of the years from 1965-1971 based on the "master ledgers". He compared the sales for each of those years, as recorded in Exhibits P90-P96, with the sales disclosed in the statements of accounts submitted with the firm's Annual Income Tax Returns for those years and those disclosed in the books of accounts and documents of the firm seized on December 12, 1974. From this exercise he produced seven comparative summaries of the sales made by the firm during the period 1965-1971 as recorded in the two "master ledgers" and the relevant books of accounts. From these comparative statements it was revealed that the sales omitted from the statements of accounts submitted to the department yearly for 1965-1971 totalled $504,730.74.

As Chan Huai Ser was unable to obtain the books of accounts and documents in respect of the year 1964 he was unable to verify the accuracy of the amount of sales of $159,978.77 as disclosed in the firm's statement of accounts submitted by it with the firm's Annual Income Tax Returns for 1964. To resolve

this he employed an accounting method to reconstruct the debtor's control account in relation to the year 1964. He then arrived at a figure of $186,991.98 as the sales of the firm in 1964. The sales omitted from the statement of accounts submitted by the firm to the Department was therefore $27,013.21 for the year 1964. Chan Huai Ser calculated that the total omitted sales of the firm for the years from 1962-1971 was $579,264.78.

A great deal of evidence in this case was led on the seven fixed deposit accounts in the name of the appellant and his wife discovered by Chan Huai Ser in his investigations and which had not been disclosed by the appellant in his net worth statement Exhibit P15.

The said seven fixed deposit accounts in the name of the appellant and his wife were as follows:—

Name	*Fixed Deposit Receipt No.*	*Date of Deposit*	*Amount deposited* $	*Date of withdrawal*
appellant	63/735	4/12/63	35,000.00	24/12/70
appellant	64/682	10/ 9/64	23,939.46	24/12/70
wife	67/32	16/ 1/67	20,000.00	19/ 2/71
wife	67/731	7/ 8/67	40,000.00	19/ 2/71
appellant	69/253	19/ 2/69	40,000.00	26/11/70
wife	69/850	14/ 6/69	30,000.00	29/12/70
appellant	69/1615	14/11/69	60,000.00	19/11/70

The sources of all these fixed deposits came from the appellant's personal current account No. 6280 with the Malayan Banking Berhad.

On November 12, 1970, the appellant received for the first time from the Department a Notice under section 65A of the Act, Exhibit D6, requiring him to submit a statement of all his assets and liabilities. The withdrawals of the seven fixed deposit accounts set out above by the appellant were carried out after the receipt of the Notice Exhibit D6. The first of such withdrawals was seven days after the receipt of the notice and the remainder within three months of the receipt of the notice. These deposit accounts were all withdrawn with their accrued interest soon after or before their due dates. The total amount of these seven deposits withdrawn was $252,961.75. In addition the appellant also withdrew two other fixed deposits in his name — Account No. 70/94 for $56,180 and Account No. 70/1257 for $15,206.25 — on December 23, 1970, and December 24, 1970, respectively. The total amount of fixed deposits withdrawn between November 19, 1970, and February 19, 1971, was $324,348.

Evidence was also led by the prosecution as to the movements and dispositions of these fixed deposits subsequent to their withdrawals. The evidence revealed that —

(a) the appellant redeposited the withdrawn amount in the name of Oei Khie, (a close friend), Ng Chwee Beon (his brother), Ng Swan Chai (his sister) and fictitious persons;

(b) the appellant then opened a current account in the name of that person and at the same time made that person execute a mandate authorising him to operate the account;

(c) the appellant made use of the mandate and operated the current account as though it was his own account. He also drew cheques from one current account and deposited them into another current account;

(d) the fixed deposits under the new names were pledged to secure the overdraft facilities of their respective current accounts.

A summary of the transactions carried out by the appellant is this:—

(1) By February 19, 1971, the appellant withdrew all his fixed deposit accounts amounting to a total of $324,348.

(2) By February 19, 1971, (a) $89,536.25 of this withdrawn money was traced into the current account operated by the appellant in the names of Ong Ah Neo (his wife) and Oei Khie; (b) $121,437.50 of the withdrawn money was traced into the fixed desposit accounts in the names of Oei Khie and Ng Chwee Beon.

(3) After February 19, 1971, $70,000 of the withdrawn money was traced into the fixed deposit accounts:

(a) in the fictitious names of Ng Swee Huay and Ng See Chwee and

(b) in the name of Ng Swan Chai (sister);

(4) The balance untraceable is $43,374.25.

There is very little dispute on the primary facts. The only dispute is the inferences to be drawn from them.

It is submitted by Mr. Newey on behalf of the appellant that the notice under section 65A of the Act, Exhibit P11, relied upon by the respondent and referred to in the first charge, is *ultra vires* and void and therefore the charge is void. It is argued that the purported request contained in the notice is considerably in excess of the powers given by section 65A and is therefore not "asked or made in accordance with the provisions of this Act" as required by section 96(1)(c) of the Act under which the charge is brought and the charge consequently discloses no offence.

Section 65A reads as follows:—

"The Comptroller may give notice in writing to any person requiring him to furnish within the time limited by such notice, not being less than thirty days from the date of service of such notice, a statement containing particulars of —

(a) all banking accounts, whether current or deposit, business or private, in his own name or in the name or names of his wife or wives, or in any other name, in which he is or has been interested, or on which he has or has had power to operate, jointly or solely, and which are in existence or which have existed at any time during the period stated in the notice;

(b) all savings and loan accounts, deposits, building society and co-operative society accounts, in regard to which he has, or has had, any interest or power to operate jointly or solely during the periods aforesaid;

(c) all assets, other than those referred to in paragraph (a) or (b) of this section which he and his wife or wives possess, or have possessed, during the period aforesaid;

(d) all sources of income not referred to in paragraph (a), (b) or (c) of this section and the income derived therefrom; and

(e) all facts bearing upon his liability to income tax to which he is, or has been, liable:

Provided that no such notice may be given in respect of any period commencing before January 1, 1947."

It is pointed out (1) that paragraph (a) of the section does not mention the banking accounts in the name of the taxpayer's dependent children, it only mentions the banking accounts in the name of the taxpayer or in the name of the taxpayer's wife or wives; (2) that under paragraph (b) of the section the notice could deal only with the taxpayer's own business; (3) that paragraph (c) of the section does not mention nominees, dependent children or where the taxpayer had a mandate; (4) that paragraph (d) of the section is very wide but limited to the income of the person served with the notice and (5) that paragraph (e) of the section is very wide but limited to the person served with the notice. Nowhere in the section is dependent children mentioned. It is submitted that section 65A does not in fact entitle the Comptroller to demand particulars of the assets of the appellant's dependent children and that such demand is plainly *ultra vires*.

With all due respect to counsel I am of the view that there is no substance in this submission. Paragraph (e) of section 65A is wide enough to enable the Comptroller to ask for information as to the assets of the taxpayer's dependent children.

Next it is submitted that at the conclusion of the prosecution's case it had not been proved beyond reasonable doubt that the appellant had acted "wilfully with intent to evade tax" and the trial judge should have acquitted the appellant on the first charge.

The first charge was under section 96(1)(c) of the Act which provides:

"96(1) Any person who wilfully with intent to evade or to assist any other person to evade tax... (c) gives any false answer, whether verbally or in writing to any question or request for information asked made in accordance with the provisions of this Act... shall be guilty of an offence...."

The governing words are "wilfully with intent to evade tax."

The term "wilfully" has been considered by the trial judge and in his Grounds of Decision he has accurately set out the law. He said:

"This term (wilfully) has been discussed fully and defined in several decided cases. In the case of *Senior* [1899] 1 Q.B. 283, at page 290, Lord Russell of Killowen described the term thus; "wilfully' means that the act is done deliberately and intentionally, not by accident or inadvertence, but so that the mind of the person who does the act goes with it'. This interpretation was adopted in the case of *A.B. Tamboli* v. *Agent, G.I.P. Railway Company, Bombay*, A.I.R. 1928 Privy Council (Bombay) 24, at pages 26-27. Again, in the case of *Iannella* v. *French* (1967-1968) 41 Australian Law Journal Reports, 389, at page 393, Barwick C.J., stated, '...'wilful' connotes intention and knowledge:...', and further in his judgment therein, that, 'the word contains in its connotations elements of purpose'. Windeyer J., also in the same case, at page 399, expanded on this interpretation of the term in the words, 'If the word 'wilfully' be given the meaning and effect that I think it has in this context, then an honest mistake as to the existence of any element essential to the offence is a defence'. He also referred to the judgment of Napier C.J., in the case of *Davies* v. *O'Sullivan (No. 2)* [1949] S.A.S.R. 208, wherein it was stated, 'the natural meaning (of the term 'wilfully')... is that the act was done intentionally, not by accident or inadvertence, but so that the mind or will of the actor goes with the act...', with which he expressed his agreement. In referring to several other decisions, including that of Fullager J., in *Jackson* v. *Butterworth* [1946] V.L.R. 330, Windeyer J., added that, 'That word 'wilfully' does not stand alone. Its importance is in the meaning which it gives to its context'."

Mr. Newey says that it is very important in assessing the issue of *mens rea* to recognise the personality of the appellant and the background of the case. From the evidence adduced by the prosecution the following facts emerged. The appellant is wholly illiterate in English and is almost totally illiterate in Chinese and can only read and write a few words. He knows his numerals but he places his decimals at the wrong places. He has no grasp or understanding of accounts and can only do simple additions and subtractions. The appellant and his father had a windfall and they went into business together under the style of Poh Hua Granite Quarry Co. The organisation of this firm was elemental and the business was carried on in a thoroughly unbusinesslike fashion. The firm at first had no banking account and partnership money was paid into the appellant's personal account. The accounting aspects of the firm were also elemental. The only accounts which the appellant conceived were needed were accounts showing who owed money and when debts were paid. Hence he had from the beginning the two small notebooks Exhibits P83 A and B and later the two ledgers Exhibits P86 and P87. In each of these exhibits were recorded the sales of granite, the date of such sales, the name of the purchasers and the date and amount of payment of the debts. The handwriting in these exhibits is the handwriting of different persons and were written up by some clerk in the office from the sales vouchers.

The appellant claimed that not all vouchers found their way to the book-keeper with the result that unreported sales occur. The prosecution said that that was fraudulent but Mr. Newey submits that inferences could be drawn to the contrary. If this was a fraud the proceeds of these unreported sales would go to the appellant's own personal account. It is clear that some of the reported sales went into the partnership account and some to the appellant's own account. If there was fraud care would have been taken to see that the vouchers of unreported sales would be destroyed but Chan Huai Ser had no difficulty in finding the vouchers of the unreported sales and they were from 1966. If there was a fraudulent scheme the books Exhibits P83A and B and the ledgers Exhibits P86 and P87 would not have been kept. The clerks made the entries in those books from way back in 1963; if there was a fraudulent scheme these books and ledgers would have been destroyed when no longer required. It is submitted that the fact that the vouchers were not destroyed, the fact that sales were put into both bank accounts, the fact that the books were not destroyed show that there was no fraudulent scheme. The appellant took the books and ledger to his accountant Yeo Kian Siew to use and the only inference was that the appellant was not acting fraudulently otherwise it would be to expose his hand.

In every single year from 1963 onwards the appellant instructed his accountant to prepare the partner-

ship accounts of his personal account for tax returns. The accountant looked into the documents and he must have seen that money of the partnership was put into the appellant's personal account. If the appellant had intended to act fraudulently he would not have asked the public accountant to prepare the accounts.

The prosecution evidence was that the appellant used the bank manager Tan Mah Chuan as his financial adviser. It is significant that at the end of 1971 Tan Mah Chuan advised the appellant to reorganise his finances. Tan Mah Chuan admitted that the bank had been grossly negligent in omitting several fixed deposits relevant to the charge, when giving information on February 21, 1972, (Exhibit P22) to Chan Huai Ser as to the fixed deposits of the appellant. The bank manager repeated this act of negligence when the appellant approached him and asked for a full list of his fixed deposits, at the request of his accountant Chua Swee Meng, and he handed to appellant Exhibits D4A and B showing the fixed deposits of the appellant and his wife and they were in fact in conformity with the information contained in Exhibit P22 given by the bank earlier to Chan Huai Ser. Chua Swee Meng subsequently checked with the bank manager who confirmed that Exhibits D4A and B contained all the fixed deposits of the appellant and his wife.

Another primary fact, says Mr. Newey, is how the appellant's accountant Chua Swee Meng prepared the net worth statement Exhibt P15 and sent it to Chan Huai Ser. The accountant prepared Exhibit P15 from the bank statements furnished by the appellant in respect of his personal account, the balance sheet of Poh Hua Granite Quarry Co. as well as Poh Aik & Co., the appellant's personal income tax file, Exhibits D4A & B given by the appellant's bank and information and explanation given by the appellant. The accountant took seven months to prepare Exhibit P15 and it is submitted that he made no proper investigation. He should have looked into the partnership money in the appellant's account; he was asked by Chan Huai Ser about the cheques and if he had inquired into them they would have led him to the fixed deposits. He had not considered about bad debts. When Chan Huai Ser challenged certain of the loans in Exhibit P15 the accountant made no attempt to provide Chan Huai Ser with any real information for Chan Huai Ser to accept it. It is submitted that the accountant did not look properly into the affairs with the result that the appellant is now before the court.

It is also said that to a large degree, as far as documents were concerned, the appellant was dependent on what other people told him and that the appellant was let down by his first accountant and by the bank manager Tan Mah Chuan but for whose mistakes all his fixed deposits would have been disclosed and by his second accountant Chua Swee Meng who did not make a proper study of the appellant's affairs.

Mr. Newey submits that given all these primary facts the right inference to draw is that the appellant is innocent and he submits that at the end of the prosecution's case there was a doubt that the appellant acted wilfully with intent to evade payment of tax.

To sum up, Mr. Newey has asserted four sets of primary facts, namely (1) appellant is illiterate; (2) the existence and reliance of the appellant on Exhibit D4A and B; (3) the appellant relied completely on his accountant Chua Swee Meng; (4) the appellant relied completely on his bank manager, Tan Mah Chuan, in respect of the reorganisation of his financial affairs. Mr. Newey submits that the right inference to draw from these primary facts is that the appellant was innocent.

Two questions must be borne in mind when considering these primary facts. First, was the omission of the seven fixed deposits from Exhibit P15 done wilfully? Second, was the omission of the seven fixed deposits from Exhibit P15 done with intent to evade tax?

Wilfulness implies knowledge proved by circumstantial evidence, rather than by direct evidence, to be gathered from the acts and conduct of the appellant. With intent to evade tax implies motive. What was the motive of the appellant? Was it solely to evade payment of less tax? The ultimate question before the court is what is the totality of the evidence of the acts and conduct of the appellant at the relevant time when the appellant prepared and submitted Exhibit P15 to enable the court to infer that the omission of the seven fixed deposits in Exhibit P15 was an act done wilfully.

The evidence adduced by the prosecution showed that the appellant kept constant track of all the fixed deposits in his name, in his wife's name and in nominees' names right from the very beginning when they were deposited. The statements Exhibits P34A, P34B and P34C (sent by the Jurong sub-branch of the Malayan Banking Berhad on May 31, 1974, in reply to Chan Huai Ser's letter Exhibit P32, of April 22, 1974) showed the manner in which the appellant had been keeping constant track of all the fixed deposit accounts. These statements show that: —

(a) the appellant had his fixed deposit accounts and that of his wife renewed on or a few days after maturity date of these accounts;

(b) the appellant kept changing the terms of the fixed deposit accounts from three monthly rent to six monthly and then to twelve months;

(c) the appellant also pledged these fixed deposit accounts with the bank as securities for overdraft facilities;

(d) the appellant consistently withdrew the accrued interests from the fixed deposits and deposited them into his own personal current account No. 6280 with the Malayan Banking Berhad.

On November 12, 1970, the appellant received for the first time from the department a notice under section 65A of the Act, Exhibit D6, requiring him to submit a statement of all his assets and liabilities. Seven days later the appellant embarked on a sudden programme of withdrawals of all the fixed deposit accounts in his name and in his wife's name. The appellant then employed a complicated scheme whereby he concealed his identity and had effective and actual control substantially over the withdrawn fixed depo-

sits. The *modus operandi* used by the appellant has been summarised earlier in this judgment when I was outlining the facts. A summary of the transactions carried out by the appellant has also been set out earlier in this judgment.

The first notice under section 65A of the Act, Exhibit D6, was sent to the appellant on November 12, 1970, and the second notice, Exhibit P11, was sent to the appellant on March 1, 1972. Between the first and second notices the appellant had been very active with the withdrawn money from the fixed deposits. On October 24, 1972, the date when the appellant submitted his net worth statement Exhibit P15, he still had fixed deposits in fictitious names, in his sister's name and in the name of his brother under his control totalling $163,000. It is inconceivable that when the appellant submitted his net worth statement Exhibit P15 he was not conscious of those fixed deposits totalling $163,000 which represented half the amount of the total fixed deposits withdrawn and which was under his control. This is especially so in the case of the fixed deposit in the name of his brother Ng Chwee Beon as this fixed deposit was pledged to secure account No. 6770 of which he was the only person authorised to operate. Far from being oblivious of the existence of these fixed deposits, the appellant was very much aware of their existence and had been actively handling them as well.

When the appellant signed the Certificate of Disclosure Exhibit P20 on November 29, 1973, upon the settlement of his tax affairs with the department the evidence of the prosecution showed that he was fully aware of its contents and of the consequences of any non-disclosure. He then had a chance to declare the omitted fixed deposits but he failed to do so.

Chan Huai Ser examined the account books of the appellant which he had seized. I have already set out earlier in my judgment the findings of Chan Huai Ser. He said that in every year since 1965 to 1971 the appellant had been keeping two sets of accounts. In one set of accounts, that is the master ledgers Exhibits P86 and P87 he recorded all the sales of the firm and in another set of accounts Exhibits P40 to P62, appellant recorded only a part of the sales of the firm. In every year when submitting his firm's annual tax returns together with the attached statement of accounts, the appellant's accountant prepared the statements of accounts from the incomplete and false set of accounts thereby omitting to declare considerable amounts of sales and consequently reducing the profits of the firm by that amount. In this manner the appellant had undeclared $504,730.74 profits from the partnership from 1965 to 1971. Further evidence by Chan Huai Ser shows that sales were also omitted from 1962 to 1964 and the total sales omitted from 1962 to 1971 was $579,264.78.

At the close of the case for the prosecution there was evidence, unless rebutted by the appellant, that the appellant acted wilfully with intent to evade tax.

Mr. Newey next submits that at the conclusion of the prosecution's case it had not been proved beyond reasonable doubt that the appellant had given false answer by understating his assets by $248,939.46 and the trial judge should either have acquitted the appellant or if he thought some lesser amount had been proved have amended the charge.

The argument of Mr. Newey is this. The appellant and his father are partners in Poh Hua Granite Quarry Co. The profits of the firm are, in law, payable equally to both partners and the appellant is, in law, required to account to his co-partner for the co-partner's share of the monies of the firm which the appellant has in his account or which he may have utilised. The legal position is that half the net money of the firm which is in the appellant's possession belongs to his co-partner and the co-partner is to that extent a creditor and the apparent assets of the appellant must be, to that extent, reduced to give a true picture of his worth. The prosecution cannot treat the profits of the firm to which the co-partner is entitled as assets of the appellant and the appellant cannot be convicted for failing to declare as his own the assets of his co-partner.

Mr. Newey submits that the factual result of the application of the law is that the understatement was $16,394.08 and not $248,939.46 as set out in the first charge on the basis of the calculations done by the appellant's accountant Yeo Kian Siew at the request of the defence (Exhibits D9 to D19).

Exhibits D9 to D19 purported to present a more accurate statement of the appellant's net worth than was contained in Exhibit P15 the net worth statement prepared by the appellant's first accountant Chua Swee Meng and submitted to the department. It was Yeo Kian Siew's evidence that whatever monies obtained from the sales of granite by the firm which had been channelled into the appellant's personal bank account, No. 6280, should properly be regarded as the liabilities of the appellant — i.e. as drawings or loans from the firm — and treated as such. Any profits of the firm therein, which had not so far been reported to the department, should be halved and one-half credited each to the appellant and the other equal partner in the firm, namely, Ng Tham, his father. This should be so since these profits still belonged to the firm and Ng Tham was still entitled to his half-share of it, being an equal partner therein. In addition Yeo Kian Siew also took into account loans made and claimed by the appellant as liabilities but which had not been accepted as such by the department in its assessments, and the halving of newly discovered "bad debts", accumulated throughout the years and not previously claimed as such. He also took into account the interest that had accrued on the undisclosed fixed deposits which still comprised monies belonging to the firm, and opined that this interest should be similarly halved and shared equally as between the appellant and the other partner, Ng Tham.

On the above basis and with the support of his working papers, he testified, with reference to Exhibit D11, which he described as a "revised Nett Worth Statement", that the increased wealth attributed to the appellant in Exhibit P35 (i.e. the second Nett Worth Computation Statement prepared by Chan Huai

Ser) was inflated and ought to be reduced correspondingly. Hence, comparing Exhibit D11 with Exhibit P16, the first net worth statement, he stated that the appellant would thereby have undeclared his income by only $16,394.08, if the bad debts claimed and the interest on fixed deposits were halved as between himself and the other partner, Ng Tham, and taken into account as well. However, if his claimed loans to Oei Khie and Ng Swan Chai, totalling $95,000, which had been disallowed by the department, were also included in Exhibit D11 then it would be shown, in a comparison with Exhibit P16, that there was an over-declaration of his assets by about $78,000, although, when compared with Exhibit P35, the second net worth statement, no net discrepancies would be revealed.

Mr. Newey submits that the trial judge should have concluded at the end of the prosecution's case that the understatement was $16,394.08 and he could have discharged the appellant on the first charge or if found that some lesser amount had been proved, amend the charge to one of the lower figure. The trial judge did not amend and it is too late now to amend.

The Income Tax Act does not recognise a partnership as a distinct taxable persona. It follows that a partnership is not a separate entity distinct from the partners forming the partnership and has no direct liability for the payment of tax. The partnership is liable only to lodge a return of income through its partners. The next step then is for the Comptroller to determine first the taxable income of the partnership on the basis of what is submitted in the partnership return, and the Comptroller will then apportion such taxable income among the partners according to their rights to share in the profits of the partnership and such apportioned taxable income is accrued to the individual partner's return of income. The issue of apportionment of the profits of a partnership arises under section 36 of the Act but it clearly refers only to declared taxable income submitted in the return in order to allow the Comptroller to determine the individual partner's share of profits and consequently their individual liability to tax. Thus, apportionment is a procedure prescribed by the Act and is exercised by the Comptroller to allow him to determine what is the individual partner's liability to tax on the declared profits of the partnership. But if profits from the partnership are not declared in a partnership return then the question of apportionment of the evaded profits among the partners to be included in their individual tax return to allow the Comptroller to determine their tax liability on the evaded profit cannot arise. Nowhere in this section is there any suggestion as to how the evaded profits, or income, of a partnership should or must be apportioned in the event of a prosecution of a partner under section 96 of the Act. It is, therefore, incorrect on principle for the appellant to suggest that the act of apportionment applies without any distinction being made between evaded profits and declared profits. In my view section 36(a) cannot, therefore, apply to the present case. In short, the Act does not provide for any apportionment of evaded taxable income among its partners where a prosecution has already been instituted against one partner in respect of that evaded taxable income.

In the present case the prosecution evidence showed that the appellant had appropriated the money from the partnership over a period of not one or two years but ten years. The omitted profits first found their way into the appellant's current account No. 6280 and were later converted into assets — real properties and fixed deposit accounts in the appellant's name and in his wife's name. Over this long period of ten years these assets including the fixed deposits omitted consistently remained in the appellant's name and in his wife's name. The appellant had exclusive ownership of all these assets for ten years. In the case of the fixed deposits, even after their sudden withdrawals, the evidence of Tan Mah Chuan, the bank officer, showed that the appellant still had substantial control over them. The interest that had been earned on these fixed deposits had been received and utilised by the appellant. These were clearly assets of the appellant.

This submission of the appellant, therefore, fails.

Mr. Newey's next submission is that after hearing the evidence of the appellant the trial judge should have held at least there was a reasonable doubt as to whether the appellant had wilfully with intent to evade tax given false answer by understating the net value of his assets by $248,939.46 and should have acquitted the appellant on the first charge.

Mr. Newey says that both the appellant and his father, Ng Tham, had given evidence as to the position of the partnership; that the appellant had dealt with the fixed deposit accounts and the interest etc.; that the appellant's sister, Ng Swan Chai, and another witness, Oei Khie, supported in the main the appellant's evidence and that the trial judge should, after hearing the evidence of the appellant and his witnesses, have held that there was at least a reasonable doubt as to whether the appellant had wilfully intended to evade tax by understating his assets.

The story of the appellant as regards the fixed deposits was this. At the end of 1970 he was in "trouble" and the bank manager, Tan Mah Chuan, suggested to him to withdraw some of his fixed deposits to repay his creditors. This was after he showed Tan Mah Chuan the first notice under section 65A, Exhibit D6. He accepted the advice of Tan Mah Chuan and withdrew all the eight fixed deposits between November 1970 and February 1971. In his own words, "some of this money was made to pay loans I had taken from some people. The rest of it was returned to those who had their money with me."

This was what he said he did with the money withdrawn: —

(1) He returned $40,000 to his sister Ng Swan Chai. She "had $40,000 with me and I returned it to her." He returned it to her because she was about to get married. She then put this sum into a fixed deposit account. On his request that he be allowed "to use her money" she executed a mandate to authorise him to operate her current account. Ng Swan Chai on the other hand said that, "Just before I was

married I did not ask for this money. I got it back. He gave me back. He asked me to go to the bank and he gave me $40,000 odd in my name in a fixed deposit. Now my brother owes me the $40,000." Under cross-examination she said that the $40,000 was in repayment of a long overdue debt that her brother owed her. She said it was her own idea to open the fixed deposit account but said she was taken to the bank and the fixed deposit was opened in her name by her brother. On the same day she opened a current account and executed a mandate that authorised the appellant to operate her current account. In her own words, "it was done so that he could make use of the money." The fixed deposit account and the current account were both opened on July 13, 1971. She agreed that she never drew on this current account. She was asked about the withdrawal of the $40,000 from her fixed deposit but expressed ignorance of this. When reminded that the account, being in her name, could not be closed without her consent she stated, "I don't know when my brother took away the money." When it was put to her that it was the appellant who himself closed her account and took away the sum of $40,000 she offered no answer and remained silent.

(2) He had wanted to transfer a sum of money back to his father's name but instead had transferred it into the name of his younger brother, Ng Chwee Beon, at his father's suggestion. According to the father, Ng Tham, a sum of $68,000 was given to him by the appellant and he in turn gave his younger son Ng Chwee Beon two sums, $15,000 and $53,000, which were placed in two fixed deposit accounts in the name of Ng Chwee Beon, on December 24, 1970. The $15,000 was intended for Ng Chwee Beon to purchase machinery whereas the other sum was for him to start a construction business. This latter venture failed to materialise and the money was returned to Poh Hua Granite Quarry Co. Arising from the handing over of this sum by the appellant to him, the father was asked of the profits due to him from the firm from 1962 till today but he was unable to so state. Since 1962, according to him, he had not asked the appellant to account to him as regards his share in the firm's profits. In fact he insisted even that it did not matter whether or not the appellant finally gave him his share of the profits.

(3) A sum of $55,000 was put in a fixed deposit account and a sum of $1,180 in a current account both in the name of Oei Khie a friend both opened on December 23, 1970. The $55,000 was a repayment of a loan of that amount to Oei Khie. Oei Khie then executed a mandate authorising the appellant to operate the current account. The fixed deposit account was pledged to secure overdraft facilities granted in respect of this current account.

The appellant was cross-examined and what he said in cross-examination was dealt with by the trial judge in his Grounds of Decision. The trial judge said:

"As regards this loan of $55,000 taken from Oei Khie he explained, under cross-examination, as to how it came about, thus: around 1967 he had ventured into the tin-mining business in Johore in a tin-mine known as Tong Seng Mining Company. Oei Khie had advanced $30,000 to him of which $10,000 was to be his (i.e. Oei Khie's own investment in the business with the balance of $20,000 as a loan to him, i.e. the Accused). Then in 1968 he took another loan of $35,000 from Oei Khie when he started another company, namely, Tong Mah Company.

On this point, the learned Prosecutor, Mr. Ronald Lee, referred him to his N.W.S., Exhibit P15, in which is stated an amount of $15,000 as being a loan taken from Oei Khie in 1968, and requested him to explain this in the light of his claim that he had taken a loan of $55,000 instead from the said Oei Khie. In reply he agreed that he had said so and explained that this was because in that same year, i.e. 1968, he 'was owing Oei Han Beng (i.e. Oei Khie's father) the sum of $35,000'. As Oei Han Beng had suffered a stroke this debt was transferred in favour of his son, Oei Khie, and hence his statement that he 'was owing Oei Khie instead of Oei Han Bang.'

The Accused also identified a cheque (from Exhibit P31), namely, No. 218848, dated January 21 1968, for the amount of $35,000 and made payable to Oei Teck Thye, as representing his 'investment' in his company, Tong Mah Company. He also identified another cheque No. 019777, for the sum of $35,000 (Exhibit P153), as representing the loan in question that he had obtained from Oei Han Beng in 1968 and denied that this was instead a repayment by Oei Han Beng of a loan taken from him in 1964. Mr. Ronald Lee however, in his cross-examination, referred him to another cheque, No. 079015, in Exhibit P13, for the sum of $30,000, which he admitted at first as representing a loan he had made to Oei Han Beng in 1964. When asked further whether the said Oei Han Beng had repaid this loan to him he retracted his earlier statement and maintained instead that this sum of $30,000 represented the repayment, by him, of a loan taken from Oei Han Beng earlier. This 'loan', he explained, consisted of several loans that he had taken from Oei Han Beng since 1959 which, by 1961, totalled $30,000. This was repaid by the cheque referred to, i.e. No. 079015. Mr. Ronald Lee then again referred him to his N.W.S., Exhibit P15, where Oei Han Beng had been described as a debtor in respect of certain loans obtained from him (i.e., the Accused), rather than as a creditor, as was implied from his testimony, to which he replied, 'He never owed me any money'. He was also unable to explain how Oei Han Beng had been included in the 'Debtors' column in his N.W.S., Exhibit P15. He further denied an item appearing in this N.W.S. whereby Oei Han Bang had been described as having borrowed $18,000 from him in 1960 and instead countered that the said Oei Han Beng owed him some money which had since been paid up. However, in re-examination by his Counsel, Mr. Marshall, on this same point he stated, 'I was not aware of it when I signed Exhibit P15' (*vide:* page 253, Notes).

The Accused was also asked by the Prosecuting Counsel for the necessity of borrowing the aforesaid sums of money from Oei Khie in 1967 and Oei Han Beng in 1968 when, according to Exhibits P34A and P34C, there was $110,000 in fixed deposits in his and his wife's name, to which he replied that he treated those fixed deposits as 'reserved for his business' and that it belonged to Poh Hua Company anyway. Furthermore, as Oei Han Beng had just sold his property and was willing to lend him the money he readily accepted the loan. He was also of the mind then that the fixed deposits could be used 'for some other business' and 'at the same time if my father wanted his share of the money *Y* could have ready money with me (*vide*: page 248, Notes).

In re-examination by his Counsel, Mr. Marshall, on this point again, the Accused identified a photostat copy of a 'Cash' cheque for the sum of $60,000 that was shown to him (Exhibit D22) and confirmed that this represented his repayment, in 1971, of the loans in question that he had taken from Oei Khie. However, when cross-examined further by Mr. Lee, Prosecuting Counsel, on the alleged loan of $55,000 as compared with his alleged repayment of it with this cheque for the sum of $60,000 instead, he preferred the unenlightening explanation, 'The fixed deposit of $55,000 which was used to secure overdrafts from the Bank had been used up by me by way of overdrafts. Therefore I had to pay him $60,000'."

Oei Khie's evidence on these matters was dealt with by the trial judge who said:

"Oei Khie's evidence on these matters relating to the alleged loan of $55,000 to the Accused and the latter's alleged repay-

ment of it by the cheque, Exhibit D22, for $60,000 was to this effect; he affirmed the advance of the loan of $20,000 to the Accused in 1967 in connection with a tin-mining business in Malaysia and also the loan of $35,000 by his father, Oei Han Beng, to the Accused, also in 1968. The total of these loans, i.e. $55,000, was repaid to him in 1970 by the Accused and this sum was put into a fixed deposit account with the Malayan Banking Berhad Sub-Branch in Jurong. The Accused had then again asked him for a short term loan to which he agreed. Presumably this was when the Accused operated his current account, No. 61790, under the mandate executed by him, which had been granted overdraft facilities secured by the Fixed Deposit Account No. 70/2090 in his name. Eventually in 1971 the accused repaid him again with a cheque for $60,000, i.e. Exhibit D22.

In an explanation as to the source of his funds he stated that the loan of $20,000 that he had advanced to the accused in 1967 was actually part of a sum of $50,000 entrusted to him by an Indonesian friend, Mr. Nasution, for the purpose of investing in promising business prospects in Singapore. However, when asked to clarify the status of this loan to the accused, he prevaricated as to whether the $20,000 was an investment on behalf of his friend, Nasution, or was a loan or a gift by him (i.e. Oei Khie) to the accused. He seemed, finally, to be satisfied with his own description that 'the remaining $20,000 was kept with Ng Chwee Poh . . . to be invested in construction business' (*vide*: page 267, Notes). He also denied knowledge of any instance where his father, Oei Han Beng, had been indebted to the accused for any monies lent to him."

(4) He deposited sums in the Ban Hin Lee Bank in the name of his younger brother Ng Chwee Beon and Ng Swee Oei. The evidence of the appellant is summarised by the trial judge in his Grounds of Decision thus:

"Fourthly, in relation to the three fixed deposit accounts opened with Ban Hin Lee Bank, namely, Fixed Deposit Account Nos. 71/81, 71/82, 71/83, it was the Accused's evidence that these were opened in the names of Ng Swee Chwee, which is the family name of his younger brother, Ng Chwee Boon, and Ng Swee Oei, who is the daughter of his uncle (i.e. his cousin). From what can be gathered from his testimony, which appeared to be disjointed, he had so opened those accounts as a result of the following circumstances: he had originally gone to the Ban Hin Lee Bank to 'borrow money' or, as he later clarified, to seek an overdraft of $100,000 odd. He was then about to purchase a house in Gilstead Road and hoped to get a substantial overdraft and loan from this Bank to purchase this house. Anyway, at the Bank, he had met and told one Mr. Yeap (of this Bank) that he had $100,000. This Mr. Yeap (this was presumably PW8, a director of the said Bank) had advised him that this sum could be put in his Bank 'in anybody's name' and suggested that he (the Accused) start a current account in his younger brother's name so that either he or his younger brother could operate this account. He was also told by Mr. Yeap that after he had purchased the house in question there would be some delay before he could tell him the amount of the loan that the Bank was prepared to advance him as it would want to value the house first. When asked by his Counsel, Mr. Marshall, as to why he had used the two names in question rather than his own the Accused replied, rather vaguely, that, 'Mr. Yeap suggested to use any name as it would look better when forwarded to Head Office for consideration. Subsequently two names were used' (*vide*: page 217, Notes).

As regards his statement to PW1, namely, Exhibit P118, he stated that the term 'joint fictitious names' was inserted therein by the 'Income Tax officers'. They had told him that the names were fictitious and he 'had no answer to it' (*vide*: page 216, Notes). He also explained — with an accompanying hint that he had been so induced unfairly by these officers — that he had been told that after he had signed the document, Exhibit P118, 'the Ban Hin Lee Bank matter would be settled' and that, 'when he said the matter could be settled I accepted' (*vide*: page 216, Notes). He also stated, further, that in depositing these sums into those accounts in those two names had had not had the Income Tax Department in mind then."

To put it shortly what the appellant said as regards the withdrawals of the eight fixed deposits in question was that he had had no intention to cheat or mislead the department thereby and that these withdrawals were simply for legitimate reasons.

The learned trial judge also dealt with the other aspects of the appellant's evidence in his Grounds of Decision. The trial judge said:

"Coming to the Department's second Notice to him, namely, Exhibit P11, the Accused, when shown this document, was unable to remember showing it to PW2 although it was his evidence also that PW2 knew that PW10 was 'preparing the answers to Exhibit P11' and for this reason had 'wanted the list of my fixed deposits'. Hence, on his request, PW2 furnished him with such a list, i.e. Exhibits D4A and D4B. He was assured by PW2 that these documents contained 'everything' and so had taken them with him. He took them to PW10 at the latter's office and had also observed then PW10 speaking to PW2 over the telephone. He could not make out the conversation as it was in English. Even when he had handed Exhibits D4A and D4B to PW10 he was ignorant of their contents.

He had also submitted a list, Exhibit P148, relating to cheques that had been paid into his account, No. 6280, which was prepared and verified by his clerk, to PW10. This was to assist PW10 in his preparation of Exhibit P15, his N.W.S. Subsequently, at PW10's office, he was shown Exhibit P15 and informed that 'the thing was done' and he 'quickly signed it'. He was also informed that this would be forwarded to the Department to 'settle the matter' and he signed it 'knowing very well that that document was for the Income Tax Department' (*vide*: page 221, Notes). Following this there were negotiations with the Department for a settlement by the proposed payment of $150,000 towards his 'income tax liabilities'. This was finalised on November 29, 1973. He also signed the Certificate of Disclosure, Exhibit P20, which was read over to him by PW11, his accountant then, and was of the belief then that he had declared everything to the Department. In particular he had had no suspicions that the list of his fixed deposits in Exhibit D4A and D4B was incomplete when he had submitted it to PW10, his accountant at the time of the preparation of his N.W.S., Exhibit P15.

It was only after this that PW2, his Bank manager, informed him of the existence of other fixed deposits that had been omitted from the list that he had sent to the Department earlier and that this additional information was to be transmitted thereto. He did not object to this though he was a bit angry over it. He however, told PW2 to explain the 'whole position clearly' to the Department.

Subsequently, PW1 had asked him to explain the reasons for the undisclosed fixed deposits to which he had replied that the 'Bank had already informed him'. He also told PW1 that he had relied on his Bank for the information and that he was not aware that he had made an incomplete disclosure. Later PW1 came to his office with PW11 to take away some of his firm's account books. This was presumably the visit by PW1 on December 12, 1974 to the firm's premises when Exhibits P40 - P62 were seized therefrom and after PW1 had discovered that seven fixed deposits in all had been omitted from his N.W.S., Exhibit P15. It will be remembered too, that following the seizure of these account books PW1 had discovered that sales of the firm, amounting to $579,264.78 cents, had been omitted from the firm's previous returns to the Department over the period under investigation. In his testimony the Accused sought to explain these omissions.

In respect of the omitted sales of about $29,000, relating to the year 1962 (see, Exhibit P64), he explained that this formed part of the 'judgment debt' that he had recovered from Jurong Granite Quarry when he and his father had recovered possession of the land on which the quarry was sited. This sum, he added, represented the proceeds of sales of granite boulders left over at the site by Jurong Granite Quarry. He had broken these up and sold them for $29,000 odd. He was advised by 'the person who did my accounts' that it was not necessary to report this to the Department as the granite belonged to the outgoing Jurong Granite Quarry and not to his firm, Poh Hua Granite Quarry Company. He therefore

treated this sum as money owing to him by the said Jurong Granite Quarry. He also stated that 'this is the $30,000 capital I started with and which is shown in my books'. This sum had however, been recorded in the other ledgers kept by him, namely, Exhibits P86 and P87.

It will also be remembered that when PW1 was investigating the omitted sales of the firm he had discovered two bundles of sales vouchers, Exhibit P48, which related to the sales of the firm for the year 1966. The sales in one of these bundles corresponded to a portion of those entered in the 1966 Sales Book, Exhibit P46, which were also declared in the firm's statement of accounts (Exhibit P70) submitted to the Department for that year. The sales in the other bundle, namely, Exhibit P48A, recording sales of $34,406.73 cents, were however, not included either in Exhibits P46 of P70. During his examination the Accused was asked by his Counsel to explain these two bundles of vouchers. Except for saying that his clerk was responsible for keeping them in order he was unable to further explain these two separate bundles and the amounts of sales they represented, or in particular, as to why the sales therein had been omitted from Exhibits P46 and Exhibit P70.

For the remaining years 1963-1971, the Accused was also asked to explain the discrepancies in the firm's sales disclosed in, and as between, the firm's Annual Income Tax Returns for those years and in his two ledgers, Exhibits P86 and P87. His answers ranged from, 'I am not aware of the discrepancies', 'The book-keeper did not inform me about the accounts', 'I did not give instructions to anyone to make incorrect entries in the books', and finally, perhaps the most succinct, 'I cannot explain' (*vide*: page 212, Notes). With regard to the firm's statements of accounts submitted with its Annual Income Tax Returns for the period 1962-1971 (*viz*: Exhibits P64, P66, P68, P70, P72, P74, P76, P78, P80 and P105) he stated that when he signed these (except that for 1965, Exhibit P68) their contents were not explained to him by his accountant who had prepared them. He had merely been told that they were ready for submission to the Department and, relying on his accountant's accuracy, had therefore signed them. In short he was unable to explain how the omitted sales, discovered by PW1, had come about.

In closing, he stated that he had not consciously withheld any vouchers or other documents from his book-keepers, nor instructed anyone to do so, while his accounts were being prepared, and further, that he had not been consciously aware that his account books, namely, Exhibit P40 - P62, did not hold all the sales accounts of the firm for the years in question. However, he admitted that he had not given Exhibits P83A, P83B, P86 and P87 to his book-keepers who wrote up his accounts, the reason being that he 'had to make use of these books whenever customers make inquiries of their accounts'. He admitted though, in cross-examination, that he sent statements of accounts to his customers monthly and kept a duplicate copy for himself. When it was pointed out to him that these statements could have been used to answer his customers' inquiries, as he had claimed, he stated that 'the inquiries were answered by my clerk'. Then again when it was pointed out to him that as his customers were sufficiently informed through these monthly statements their 'inquiries' would therefore have been infrequent he replied, 'I really don't know because these were always attended to by my clerk. 'He did admit later that this customers made their inquiries on very rare occasions. (*vide*: page 237, Notes). He was then asked why, in the circumstances just related, the Exhibits P86 and P87 had not been forwarded to his book-keepers, when they did his accounts annually. His answer was that these books were 'kept in the quarry and were used frequently. They only carry the records of debtors'. As for the duplicate monthly statements he now stated that he did not know 'if they were monthly statements. But the clerk prepared statements for each month'. Later he stated, 'I can't read the monthly statements' (*vide*: page 238, Notes). Earlier he had stated (at page 208, Notes) that he had also used these books when he made collections of monies due on his granite sales. He 'had not been consciously aware that Exhibits P83A, P83B, P86 and P87 would have helped (his) book-keeper in doing up the accounts.' He had only become aware that Exhibits P86 and P87 were to be handed over to the Department when his accountant told him to do so.

The Accused was also referred to Exhibit D18 and took pains to explain and verify the various items appearing therein, with reference to the entries in Exhibit P86 and P87, which were now being claimed as 'bad debts' to be taken into account in evaluating his true nett worth (*vide*: page 221, *et. seq.*: Notes). He was then asked by Mr. Lee, the Prosecuting Counsel, as to why he was now making a claim for these 'bad debts' listed in Exhibit D18 when in 1967 and 1971 he had been particular enough to include two such items in his returns. His reply was that he had not made any claims for those items then because he had hoped to recover them from his debtors. He had also not informed his accountant of these 'bad debts' then as he was uncertain as to whether they could be included in his returns. He denied the suggestion by Mr. Lee that he had not included them then because they were related to the sales of the firm that had not, in the first place, been declared by him to the Department for those years in question. This point was partly clarified however when it was shown that seven of those seventeen 'bad debts' listed in Exhibit D18 were in respect of declared sales and that only ten of such 'bad debts' were not so connected."

The trial judge had carefully analysed the evidence before him and had given his reasons for coming to his conclusions. The trial judge said in his Grounds of Decision: —

"Foremost to be considered therefore, is whether this sum ($248,939.46) is to be regarded as the assets of the Accused and his wife or, shortly, as the Defence contends, as liabilities of the Accused arising from purported drawings from the monies belonging to the partnership, Poh Hua Granite Quarry Company.

It is not disputed by the Defence that a large portion of the monies received by the firm for its sales of granite — both declared and undeclared — were channelled into the Accused's account, No. 6280, from 1962-1971. It may be argued that this avenue was conveniently used by the firm as it did not then have its own bank account. But it opened its own account in 1964. Since then, till 1971, however, monies of the firm still found their way into the Accused's account. The exact quantum channelled thereinto has not been ascertained. These monies were later used and converted into assets by the purchase of properties in the Accused's name and the opening of fixed deposit accounts in his and his wife's name. These included the seven fixed deposit accounts in issue. It must be noted here that at no time during this period, from 1962-1971, had there been any annual accounting as between the Accused and Ng Tham, the other partner in the firm, as to these monies that should have been, as the Defence contends, divided between them. There were no records whatever to show that the Accused had acknowledged the fact of his utilisation of these monies for these purposes in the firm's records that might even suggest any inference that he had intended, originally, that his control and use of the monies were to be regarded as 'borrowings' from the partnership's monies and hence to be now described as his liabilities in the way of 'loans' taken. He had exclusive use and control of these monies and the evidence, particularly that relating to his acquisition of properties and the opening of Fixed Deposit Accounts in his and his wife's name, establish beyond doubt that he intended and had appropriated these monies to be used as his own, and no more. If, as his Counsel contended, these should be regarded as innocent drawings from the partnership's monies the facts adduced so far show instead that they could not have been intended to be so regarded by him during the period 1962-1971. Any amounts to which his father was entitled under the partnership was not, in the absence of any supporting records, apportioned or recorded as such anywhere during the period in question. The only evidence that could relate to this was that of Ng Tham (DW2) and his was merely to the effect that he was aware of these transactions and had approved of them. This, by itself, is insufficient to attribute to the Accused any intention to regard his use of the monies in question as 'drawings' or 'loans' from the partnership's funds. In the court's opinion it cannot now, for the purposes of the present charge, be claimed that these amounts be apportioned to that effect. In addition, despite the claim of the Accused of his intention to work out the accounts to apportion the share of the monies due to his father, which the court in the circumstances regarded more as an afterthought on his part and not one that reflected any genuine intent, it was its view that as far as the opening of the fixed deposit accounts and the acquisition

of properties were concerned the Accused had no such intentions at all during the period in question. His failure to include these seven fixed deposits in his N.W.S. also detracts from his Counsel's contention that these monies comprised 'drawings' from the partnership's monies and were regarded as such by him. In fact, from the circumstances of the case it was clear to the court that the Accused's action in relation to these seven fixed deposits confirmed that as between himself and Ng Tham there had not been any intention on his part to share that portion of the monies of the partnership that went to establish those accounts. Neither would it be useful to contend that that portion of the monies constituting the share that was due to Ng Tham were being held in trust for him by the Accused. There was no evidence to suggest that such an arrangement was contemplated by the parties at all.

Hence, in the light of all the evidence adduced and on its findings at the close of the Prosecution's case, which it is unnecessary to repeat here, the court was satisfied that this sum of $248,938.46 cents, being the total of the fixed deposits held in account in the Accused's and his wife's name, were assets of both of them, as contemplated by the Act, and in particular by section 65A therein, which was required to be included in the Accused's N.W.S., Exhibit P15, submitted to the Department on October 24, 1972. That this sum had not been declared in the N.W.S. in question has already been adequately proved.

The Accused's withdrawals of the fixed deposits in his and his wife's name within the period of three months or so, and the related circumstances thereto, was a crucial episode that had supported the Prosecution's allegation that his actions in relation to the undisclosed sums mentioned in the charges preferred were done 'wilfully with intent to evade tax'. His attempts however, to explain away these withdrawals and the ultimate dispositions of these withdrawn sums reveal seriously damaging flaws and contradictions in his evidence.

In respect of the alleged repayment of the $55,000 loan taken from Oei Khie, involving another purported loan of $35,000 from Oei Khie's father, Oei Han Beng, his complete failure to explain firstly, two loans of $18,000 and $15,000 to Oei Han Beng and Oei Khie, respectively, by him, as disclosed in Exhibit P15, and secondly, the purported repayment of the alleged loan of $55,000 taken from Oei Khie with a cheque for the amount of $60,000 (viz: Exhibit D22), convinced the court that his claim of having taken any such loan from Oei Khie was only a fabrication that had been desperately concocted to justify the withdrawal of the funds, totalling $56,180, from his Fixed Deposit Account No. 70/94. Oei Khie's testimony on this matter, including his reference to a trusting Indonesian, Nasution, with ready cash to dispense, was just as unconvincing and merely helped to enhance the falseness of the Accused's claim. It is to be noted too that no evidence was forthcoming from Oei Khie as to the destination of this cheque for $60,000 that he had allegedly received from the Accused. The court also rejected the reasons advanced by Oei Khie as to why a mandate had been executed in favour of the Accused to operate his current account. If, as he claimed, the Accused had required a short-term loan, and was allowed to operate his current account towards this purpose, there was no explanation sought from the Accused himself as to why the funds from his own fixed deposit account had been withdrawn at all, for that same account would have provided the same amount of security for him to obtain overdraft facilities from his own Bank to satisfy his need for a loan. Furthermore, an examination of Exhibits P15 and P38C, which contain entries relating to loans involving Oei Khie and Oeo Han Beng, that even contradict each other, discloses versions that are materially different from that being now related in court by the Accused. The proven facts had shown too, that consequent on the execution of the mandate by Oei Khie, only the Accused operated this current account, No. 61790. In the court's opinion the Accused had managed and manipulated the funds in question so that he ultimately regained control of them, as he had been doing in previous years.

The repayment of the alleged 'loan' of $40,000, the accumulated total throughout the years of various payments made to him by Ng Swan Chai, his sister, was explained in a pitiful experiment involving, as can be measured from Ng Swan Chai's bewildered answers in examination, an illiterate woman who was clearly being used for the Accused's ends to provide an innocent cover for some of the withdrawn funds. The accused had stated that he returned the said sum as "she was about to get married". It can be reasonably inferred therefrom that she intended the use of this sum for herself and hence the repayment to her. However, her testimony suggested instead that she was shepherded to the Bank, told that she was being repaid a loan of $40,000, and had a fixed deposit account opened in her name in respect of that amount. She was, furthermore, unaware that this account had been subsequently closed. The court was satisfied that she was quite ignorant of the existence of such a loan, let alone having advanced it. Despite her testimony to the contrary, it was further satisfied that the Accused had collaborated with her to project this claim of the 'loan' of $40,000 from her. Also, as in the case of Oei Khie, the Accused had been authorised by her mandate to operate her current account which had been granted overdraft facilities and was secured by her fixed deposit account. This was a similar and curiously devious method — as was also employed in the case of Oei Khie — to revert to him the full control and use of his withdrawn funds that he had directly exercised previously.

The use of the 'joint fictitious names' in opening the three fixed deposit accounts with the Ban Hin Lee Bank also provided an opportunity for the accused to relate a fresh tale as to how this had come about. The essence of his evidence on this matter was that he had opened the three fixed deposit accounts in question with the Ban Hin Lee Bank in order to secure overdraft facilities that he had hoped to obtain from it. It is not evident as to what, if any, advantage he could have derived from this manoeuvre . Without having to withdraw any of his fixed deposits on account he could, on the strength of those accounts, have easily secured overdraft facilities from his own Bank, namely, the Jurong Sub-Branch of Malayan Banking Berhad. Furthermore, it is not at all clear why he had decided to use the 'joint fictitious names' in opening those accounts. His explanations suggested that the official at the Ban Hin Lee Bank, one Mr. Yeap, had advised him on this although when Mr. Yeap, that is, PW8, testified for the Prosecution, it was his testimony that he had not seen these two persons who had masqueraded with those 'fictitious names', let alone spoken to them, when Fixed Deposit Accounts Nos. 71/81, 71/82, and 71/83 were opened with his Bank on February 20, 1971 (*vide*: page 234, Notes). No attempt was made to examine Mr. Yeap on this matter nor to elicit from him as to whether he had been responsible for the use by the accused of the two names other than his own in the opening of those accounts. Further, in respect of Exhibit P118, the Accused had hinted at the possibility that he was induced by PW1 and the other 'Income Tax Officers' into admitting to the use of 'joint fictitious names', as described in his statement, in the opening of those accounts. As had been described by his counsel, Mr. Marshall, his 'qualified' public accountant, PW11, was in attendance then and in fact had accompanied him to PW1's office with the letters (Exhibit P141) addressed to the persons with the 'fictitious names' which the accused had obviously received instead. He had had the fullest opportunity of obtaining the advice of this 'qualified' accountant, PW11, as to the advantages or disadvantages in disclosing to the Department then the circumstances, only being related now, as to the opening of these accounts. PW11's evidence confirmed that he had not been sounded on this latest account of the events now being related in court by the accused. The accused's explanation however, was that in the expectation that the 'Ban Hin Lee Bank matter would be settled' he therefore signed he document in question. This is hardly believable and should only properly be rejected as being indeed a fictitious account in itself dreamt up by the accused.

His explanation for not having surrendered Exhibits P86 and P87 to PW1 at an earlier stage of the investigations then in progress was, in essence, because he needed them for his collections and for reference when attending to inquiries from the firm's customers. As has also been related earlier, and arising from his own testimony, the firm's customers had been forwarded with monthly statements of accounts pertaining to their individual transactions with the firm (*vide*: page 237-238, Notes) so that inquiries from them, if any, would be rare. The accused himself admitted to this. In addition he also stated that it was his clerk who attended to those customers in their inquiries. Seen with this the accused's

original explanation *vis-a-vis* the ledgers, Exhibits P86 and P87, and the underlying suggestion that he could not do without those ledgers at any time, supported the view, held by the court, that his explanation was intended to deceive and mislead the court. There were many opportunities when he could have surrendered those ledgers to PW1, thereby displacing any suspicions that his intentions were not *bona fide*. Instead he had held on to them and, in the court's opinion, was only constrained to hand them over when PW1's investigations bored closer to the bone, as it were, but not before seeking his counsel's advice on his intended surrender of them to PW1. It was submitted by his counsel, Mr. Marshall, that PW11, his accountant, had, laudably, acted without deceit in disclosing omitted sales in his letter to PW1, namely, Exhibits P38, P38A-P38D, on November 15, 1974. It is however, most curious, that this praiseworthy accountant had not apprehended the significant importance of the ledgers in question to PW1 in the latter's investigations into the firm's sales despite PW1's persistent inquiries to him — between December 20, 1974 and January 27, 1975 — as to how he had compiled the schedules that he had submitted to the Department (*vide*: Exhibits P81, P82 and P85). It was only on July 27, 1975 that these ledgers were surrendered and PW1's subsequent examination of their contents confirmed the omission of the firm's sales from its returns. The court was of the view that when PW11 was first shown these ledgers sometime in September, 1974, he must have realised its relevance to the investigations then in progress. His several explanations for not responding at all, initially, to PW1's written requests, did not, in the circumstances, appeal to the court as being consistent with the truth. In the court's opinion however, the real culprit was the accused himself and in his case he had no recourse finally but to surrender the ledgers in the expectation that the matter would at least be settled out of court."

The findings of the trial judge are well-founded and justified and the conviction of the appellant on the first charge is correct.

It is next submitted by Mr. Newey that the penalty imposed on the first charge is in excess of the trial judge's powers under section 96(1) of the Act which provides "a penalty of treble the amount of tax which has been under-charged in consequence of the offence or which would have been undercharged if the offence had not been detected." In the present case the amount of tax payable on $248,939.46 is $124,178.25 and three times that amount would be $372,534.75, but the trial judge ordered a penalty of $467,909.10. It is submitted that the trial judge has no power to order payment of a penalty of more than $372,574.75 in the present case.

With all due respect to counsel for the appellant his contention is not correct. The tax lost is not calculated on the omitted assets but on omitted income which is arrived at by employing the net worth method of computation.

What happened in this case has been set out in the earlier part of my judgment. The appellant in answer to the section 65A notice Exhibit P11 submitted on October 14, 1972, the net worth statement Exhibit P15. In Exhibit P15 the appellant omitted to disclose the seven fixed deposits totalling $248,939.46. Pursuant to the information disclosed in the appellant's net worth statement Exhibit P15, Chan Huai Ser prepared the net worth computation statement Exhibit P16 which gave rise to a discrepancy of $255,638 being omitted income. However, when the seven fixed deposits were discovered subsequently, Chan Huai Ser prepared the second net worth computation statement Exhibit P35, wherein the seven fixed deposits were added in which gave rise to a further discrepancy of $311,926, which represent further omitted income in addition to the amount of $255,638, the tax on which had been paid by the appellant. If the additional increase of wealth of $311,926 had been disclosed at the time of the settlement an additional tax of $155,969.70 would have arisen.

The non-disclosure of the seven fixed deposits has affected the computation of the net worth statement in a radical manner. As shown in Exhibit P35 with the inclusion of the seven fixed deposits the computation showed that there was a further discrepancy of $311,926 which would thus be the omitted income whereas the sum of $248,938.46 was the omitted asset. The income omitted as a result of the offence is $311,926 and the tax thereon is $155,969.70. The trial judge was therefore acting within his powers in imposing a penalty of $467,909.10 which is three times the tax payable.

Mr. Newey in the course of his submission submits that the total discrepancy should be $293,557 (made up of the seven fixed deposits omitted, plus the interest not disclosed) and not $311,926. Counsel for the respondent in answer to this submission states that as the difference of $18,369 is not a significant sum and to avoid going into the intricacies of computation and not to prolong the arguments on the complicated calculations he is prepared to make a concession that the figure of further discrepancy be $293,557 and the tax thereon would therefore be $146,333.65 and the penalty pursuant to section 96(1) would be $439,000.95. I vary the penalty imposed by the trial court to $439,000.95.

The next point taken by Mr. Newey as regards the first charge is on the question of sentence. He submits that the sentence of nine months' imprisonment was excessive when it was imposed by the trial judge and its implementation now would be even more severe because of the long delay since its pronouncement.

The maximum prison sentence that can be imposed under section 96(1) is a term not exceeding three years. Having regard to the facts and circumstances of this case I am of the view that the sentence of nine months is not manifestly excessive.

Mr. Newey next dealt with the second charge and the other remaining charges.

He submits that at the conclusion of the prosecution's case the prosecution had not proved nor proved beyond reasonable doubt that the appellant wilfully, with intent to evade tax, omitted from his returns of income the bank interests received by himself and his wife from the fixed deposits and that the trial judge should have acquitted the appellant on the second to the ninth charges.

The trial judge in his Grounds of Decision said:

"As regards the remaining eight charges, namely, Exhibits P2-P9, it had been established by the evidence adduced that bank interest, totalling $41,618, had been earned by the accused and his wife from fixed deposit accounts held in their names for the period 1964-1971 (*vide*: Exhibit P36). These amounts had not been declared by the accused in all his annual income tax returns submitted to the Department

for the years of assessment from 1965-1972 (*vide*: Exhibits P37A-P37H). The additional taxes due on these several sums of bank interest earned and not declared amounted to $17,000.08 cents. From all the circumstances of the case disclosed, which relate also to this omission of the bank interest in question from the accused's annual income tax returns, the court similarly held that the accused, on those occasions stipulated in the charges, had omitted those sums 'wilfully with intent to evade tax' thereon. This was sufficient to establish a *prima facie* case against him in respect of all these remaining charges which, if unrebutted, would also warrant his conviction thereon."

In my view the trial judge was correct in calling on the appellant to make his defence to each of the eight charges.

It is next submitted that having heard the evidence of the appellant the trial judge should have held that there was a reasonable doubt as to whether the appellant had wilfully, with intent to evade tax, omitted from his returns of income the bank interests.

The appellant's evidence as to these interests was this. His counsel showed him Exhibit P36, which was a list compiled by Chan Huai Ser showing the amounts of interest that had been earned on the appellant's and his wife's fixed deposit accounts and which had not been declared previously in his returns of income and he merely answered: —

"I did not know that I had not declared these various amounts of interest. I asked the bank to give me a statement of interest earned by me and I submitted this statement given to me by the Bank to the Income Tax Department."

The trial judge in his Grounds of Decision said:—

"In respect of the Bank interest earned on the fixed deposits held on account in the accused's and his wife's name it cannot be disputed that those sums had indeed been earned and had been omitted also from the accused's Annual Income Tax Returns for the years of assessment 1965-1972 and which now form the bases for the remaining charges, Exhibits P2-P9. The accused had sought to explain these omissions by the claim that he had merely signed the said returns, except for one, without knowing their contents. The excepted one had been signed by his accountant then, the said Tan Hock Lin, on his behalf, a fact not disputed by the Defence. Considering the proven facts that had established his surreptitious maintenance of the two ledgers, Exhibits P86 and P87, his omission of a large portion of the firm's sales from the statements of accounts submitted with its Annual Income Tax Returns for 1962-1971 to the Department, and the intended concealment of his assets in fixed deposits through his movement of the seven fixed deposit accounts in issue, from which the Bank interest in question was earned, the court took the view that bare claim at this stage of not knowing the contents of his Annual Income Tax Returns when he had signed them provided an insufficient rebuttal to the charges as had been proven against him. It was of the opinion that the totality of the evidence must be considered to define the culpabability of the accused, if any, to those charges of omitting those sums from his returns. From the whole of the evidence and the circumstances of the case the court was satisfied that the accused was not so ignorant as he was projected to be, but rather was at least conversant of the advantages that would be gained — in lesser taxes to be paid — by the non-disclosure of his and the firm's income. And so, in omitting the said sums of interest earned, the court was of the view that a fair and reasonable inference to be drawn on the evidence adduced was that the accused had done so, not through accident nor inadvertence, but with the knowledge that he would thereby escape the lawful assessment of taxes that would be charged on those omitted sums. This was a wilful omission that was not unconnected to the circumstances surrounding the seven fixed deposits in issue in the first charge, Exhibit P1.

At the close of the Prosecution's case the court had held that the accused's action in understating the nett value of his assets by $248,939.46 cents, i.e. in respect of the first charge, Exhibit P1, was not done through accident or inadvertence but that he had deliberately refrained from disclosing that sum in his N.W.S. in the first instance while possessed of the conscious knowledge that by doing so he would thereby escape the payment of taxes that may be assessed on this sum. The court had likewise held that the accused had the same wilful intent to evade taxes when he omitted the Bank interest earned on his and his wife's fixed deposit accounts from his returns of income for the years of assessment 1965-1972, i.e. in respect of the remaining charges, Exhibits P2-P9. Accordingly it held that the Prosecution had, in respect of each of these charges, proved a *prima facie* case which if unrebutted would warrant his conviction thereon on all these charges.

After hearing his defence thereto and the evidence adduced in support thereof, which were considered most carefully, the court satisfied itself, on its considerations (of the evidence) related earlier, that the accused had not rebutted the Prosecution's case nor raised any reasonable doubts in its mind as to his guilt on all the nine charges as proven then. The court retained its findings, reached at the close of the Prosecution's case, on the accused's guilt to these charges, both on the facts as disclosed and on the law as expounded in the authorities cited. It accordingly found him guilty on all the said charges and convicted him thereon."

In my view the trial judge had come to a correct finding.

The appellant was rightly convicted under section 96(1) of the Act and the trial judge had correctly imposed the penalty of treble the amount of tax involved in the charges.

The proviso to section 96(1) provides that "where the individual has been convicted for three or more offences under this section the imprisonment he shall be liable to shall not be less than six months". There can be no argument that the sentence of six months in this case was not correctly imposed.

In the result this appeal fails and is dismissed.

Appeal dismissed.

Solicitors: *David Marshall.*